

HOUSE BILL 1215
By McDaniel

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 18, relative to a criminal defendant's right to effective assistance of counsel.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 18, is amended by adding the following as a new section:

Section____.

(a) Prior to accepting any guilty plea and prior to commencing any criminal trial, the court shall address the defendant on the record and determine the following:

(1) That the defendant is satisfied with his attorney;

(2) That all motions to suppress or motions in limine have been filed or that the defendant has been advised of such possible motions and agrees to waive them;

(3) That all witnesses for the defense are available and if not available everything has been done to secure their attendance. If it appears to the court that a witness cannot be obtained or that the witness is not relevant or material the court may so rule and proceed to trial;

(4) That all evidence which the defense intends to produce is available; and

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(5) That the defendant and his attorney have discussed the facts of the case, the testimony of all witnesses and all defenses. The defendant will state on the record what defenses have been discussed and whether or not he agrees to proceed at trial under that defense.

If the defendant acknowledges that he is ready to proceed the court will then proceed to trial pursuant to law.

(b) At the close of all evidence the court will again inquire of the defendant on the record whether he has any other proof, evidence or witnesses. The court shall inquire whether the defendant desires any further action on behalf of his attorney prior to submitting the case for final argument and jury deliberation. The court shall then make a finding of fact that trial counsel was effective or was ineffective. If the court determines that counsel was ineffective it shall order a new trial. If the court determines that counsel was effective it shall proceed in accordance with law.

(c) The issues addressed by the trial court under this section shall be deemed by law as issues raised on appeal to be addressed by the appellate courts hearing the case. If the appellate courts enter any order other than one finding contrary to the trial court on any issue addressed by the trial court pursuant to this section, it shall be deemed an affirmation of the trial court's ruling. No issue addressed by the trial court under this section may be addressed under post-conviction or other extraordinary writ unless the defendant first submits a petition to the trial court requesting an issue be addressed and show plainly in the petition specific and articulable facts as to why the issue could not have been addressed at trial or on appeal. The trial judge shall review any such petition with a strong presumption of waiver and should grant permission to file a petition for post-conviction addressing such an issue addressed under this

section only in exceptional circumstances. The trial court may permit the district attorney general to respond to such petition. If the trial court decides to permit a petition for post- conviction or extraordinary writ, such petition shall be filed in accordance with existing law.

(d)

(1) Before accepting a guilty plea the trial court shall require the defendant and counsel for the defendant to submit an approved form which contains all rights enumerated under Rule 11 of the Tennessee Rules of Criminal Procedure. The form shall also list the following defenses: alibi, self-defense, defense of another, entrapment, misidentification, unlawful search, unlawful arrest, Miranda violations, defects in warrants, defective indictment, insanity, intoxication, and sufficiency of evidence.

(2) The form shall also include a statement that the defendant has discussed each enumerated right and defense and waives them, that the defendant has discussed the names of all witnesses and all evidence known to the defendant, and that the defendant and the defendant's attorney have discussed the case at length together with the state's evidence.

(3) The form shall further state the nature of the plea agreement and that there are no other terms or conditions unless expressly stated and accepted by the trial court.

(4) The form shall include a statement that the defendant adopts the contents of the form under oath subject to the penalties of perjury and shall be signed by the defendant, defense counsel, district attorney or his representative and the trial court judge. The trial judge shall then address

the defendant as required by Rule 11 of the Tennessee Rules of Criminal Procedure and any other applicable law and accept or reject the plea.

(e) A plea accepted in accordance with this section shall constitute a waiver of all issues addressed in such form and no issue addressed in the form may be raised in any post-conviction petition or other extraordinary writ. Nor may any such issue be the basis for raising a claim of ineffective assistance of counsel.

(f) The form adopted by the trial court may contain additional provisions as the court sees fit for the effective administration of justice and such provisions shall be equally binding on the defendant.

SECTION 2. For the purpose of preparing the forms required by this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes it shall take effect on July 1, 1997, the public welfare requiring it and shall apply to any criminal trial commenced or guilty plea entered on or after such date.

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